

Members:

Rep. Mark Kruzan, Chair
Rep. Richard Mangus
Rep. Dale Sturtz
Rep. David Wolkins
Sen. Kent Adams
Sen. Beverly Gard
Sen. Glenn Howard
Sen. Vi Simpson



Lay Members

Michael Carnahan
Randy Edgemon
John Fekete
Hon. Jack Fowler
Marvin Gobles
William Goffinet
Max Goodwin
John Hamilton
Kerry Michael Manders
Regina Mahoney
David Rector
Gary Reding
Alice Schloss
John Walker
Lynn Waters

LSA Staff:

Tim Tyler, Attorney for the Council
Kristin Breen, Fiscal Analyst for the Council

Authority: P.L.248-1996 (SEA 138)

ENVIRONMENTAL QUALITY SERVICE COUNCIL

**Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 232-9588 Fax: (317) 232-2554**

MEETING MINUTES

Meeting Date: October 9, 1998
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St.,
Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 5

Members Present: Rep. Mark Kruzan, Chairperson; Rep. Dale Sturtz; Rep. David Wolkins; Rep. Richard Mangus; Sen. Beverly Gard; Sen. Kent Adams; Sen. Vi Simpson; Sen. Glenn Howard; John Fekete; Marvin Gobles; John Hamilton; Regina Mahoney; Kerry Michael Manders; David Rector.

Members Absent: Michael Carnahan; Randy Edgemon; Hon. Jack Fowler; William Goffinet; Max Goodwin; Gary Reding; Alice Schloss; John Walker; Lynn Waters.

Representative Mark Kruzan, Chairperson of the Environmental Quality Service Council (EQSC), called the meeting to order at 1:53 P.M.

John Hamilton, Commissioner of the Indiana Department of Environmental Management (IDEM), distributed copies of his monthly report to the EQSC.¹ Mr.

¹ A copy of this report is on file at the Legislative Information Center, Room 230, State House, Indianapolis, Indiana. The telephone number of the Legislative Information Center is (317) 232-9856, and the mailing address is 200 West Washington St., Suite 301, Indianapolis, IN 46204-2789

Hamilton stated that the documents in the report concerned outreach, education, and assistance activities, rulemakings, fees collected, permitting activities charts, media advisories, the October IDEM calendar, a response letter concerning the Paul H. Rohe Company, the IDEM organization chart, a budget transmittal letter, and an activity-based budget for IDEM for the 1999-2001 biennium.

Mr. Hamilton stated that the media advisories included information about the new structure and management team at IDEM. He said IDEM has reduced the number of senior managers and increased the involvement of assistant commissioners in IDEM's responsibilities.

Mr. Hamilton also said the media advisories included an announcement about a major urban air toxic project. He stated that fixed and mobile air monitoring canisters would be placed in Lake, Elkhart, Marion, and Vanderburgh Counties to measure ambient air quality. He said the focus of this project would be on "what people are breathing" as opposed to what comes out of a specific smokestack.

Mr. Hamilton also said that the permitting activities charts would show that no late permits were issued in September. He said these charts were now available on the IDEM Web Page at www.state.in.us/idem/permitreport.

Representative Kruzan also mentioned that the EQSC Web Page could be found on the General Assembly Web Site at www.state.in.us/legislative/interim/committees.

Mr. Hamilton then distributed a copy of an IDEM memo concerning IDEM's plan to create a new office tentatively called the "Office of Land."² He said this new office would combine the Office of Environmental Response with the Office of Solid and Hazardous Waste.

Mr. Hamilton said there were several benefits that could be achieved by work sharing and closer coordination between these two offices. He said the benefits included enhancing the ability to work on the common goals of properly managing wastes and cleaning up wastes dumped or disposed of on Indiana land and increasing efficiency and effectiveness by centrally directing resources. Mr. Hamilton said IDEM should have an organizational structure designed for this new office by the end of the year.

Mr. Hamilton then gave a summary of the IDEM presentation recently made to the State Budget Committee. He said highlights of 1999-2001 budget improvements included a change in the IDEM spending structure in which every federal dollar would be spent first, then dedicated funds would be spent to the fullest extent possible for their dedicated purposes, and only then would state General Fund money be spent. Mr. Hamilton said other highlights included developing costs for agency-wide services and developing activity-based budgets to match IDEM areas of service.

² A copy of this memo is on file with the Legislative Information Center (see footnote 1).

Mr. Hamilton said that the total proposed IDEM budget for Fiscal Years 1999-2001 was \$245,266,000 of which 51% would come from dedicated funds, 22% from federal funds, and 27% from the state General Fund. He said this compared with a total budget for 1997-1999 of \$198,786,000 of which 42% came from dedicated funds, 27% from federal funds, and 31% from the state General Fund.

Mr. Hamilton said that IDEM staffing levels had approximately doubled since 1986. He said that while he projected a significant reduction in temporary employees, the total number of IDEM employees should remain "flat" for the next biennium.

Mr. Hamilton also said IDEM wanted to unify fee billing across the agency, eliminate paperwork permit requirements for more than 1,500 facilities, cross-train inspectors, and modify hazardous waste manifest reporting.

Mr. Hamilton concluded by stating that the major initiatives that faced IDEM over the next two years included new clean air standards, confined feeding issues, lead paint abatement, and, in the water program, issues concerning total maximum daily loads.

After a brief discussion by EQSC members, Representative Kruzan announced that the next two EQSC meetings would occur on November 12, 1998, and December 10, 1998. Representative Kruzan then asked Senator Simpson to present the IDEM Staffing Subcommittee report.³

Senator Simpson stated that, as for specific IDEM staffing recommendations, the immediate need for additional staff is most severe in the Office of Water Management and the Office of Environmental Response. She said the water quality monitoring and permitting staff should be increased to the current budget manning table level of 289 from its current staffing level of 227, including temporary staff. She said this staff level is needed to increase monitoring, develop scientifically sound water quality data, and eliminate the backlog of NPDES permits. She also said the Office of Environmental Response staff should be increased to the current budget manning table level of 160 from its current staffing level of 124, including temporary staff. Senator Simpson said there are existing needs in emergency response, state clean up of high risk clean up sites, the Voluntary Remediation Program, and the developing RISC Program.

Senator Simpson also said the Office of Solid and Hazardous Waste staff numbers have declined in recent years. She said staff should be manned at the 1996 level of 184 positions to perform current responsibilities.

Senator Simpson said future responsibilities assigned to IDEM by both the federal government and the Indiana General Assembly will create future needs in staffing. She said in the Office of Air Management, the Title V and State Implementation Plans for Particulate Matter 2.5 and ozone will create a demand for additional technically sophisticated air pollution control staff. She also said in the Office of Water

³ A copy of this report is on file with the Legislative Information Center (see footnote 1).

Management, non-point source pollution issues will require additional staff in the near future.

Senator Simpson said the Subcommittee also made several recommendations concerning general state agency staffing. She stated that high level scientific, engineering, and other positions requiring technical expertise should be reevaluated with regard to legitimately competitive salaries for the recruitment and retention of qualified personnel. As an example, she said in IDEM chemists, toxicologists, and environmental attorneys should be reassessed and upgraded to recognize the necessary special acquired skills. She said these positions are currently assessed against non-comparable positions such as lab-bench chemists and general practice attorneys.

Senator Simpson also said the State Personnel Department should be urged to recognize that the pressure on state agencies to hire additional numbers of staff may create a tendency to lower qualifications. She stated the State Personnel Department must make an effort to ensure that minimum qualifications reflect appropriate levels of education and experience for scientific, technical, and legal staff positions.

Senator Simpson continued by stating that, as previously recommended by a General Assembly study committee and agreed to by IDEM, the State Personnel Department should establish a dual career track for professional positions with substantial regular advancement in compensation accrued from experience and competence in the same area. She said this will enable IDEM and other departments to recruit and maintain fully competent technical staff in non-managerial career ladders. She said a system analogous to the federal civil service ranking system should be considered.

Senator Simpson also stated temporary positions and contract employees should only be utilized for truly temporary work or short term projects. She said the use of temporary positions results in lower staff morale, the lack of consistency, and the loss of invaluable institutional memory.

Senator Simpson concluded by stating that the Subcommittee also addressed two related issues. She said water and waste permit fees were increased by the General Assembly in 1994 to provide funding from the regulated community for the processing of permits in a timely manner. She said the formula that was established has allowed the hiring of additional staff to deal with the technicalities of permits and to work through all backlogs. She said that currently, approximately \$9 million has accumulated in the nonreverting permit fee fund. She said legislation should be adopted to establish a system similar to the Clean Air Act permit fee fund accountability mechanism to ensure that the fee fund balance is maintained at a reasonable level and that the monies are used to achieve the identified objectives.

Senator Simpson also said an independent external analysis should be conducted to consider whether the number of IDEM employees and the quality of IDEM employees are sufficient to meet the environmental policies and priorities of the administration and the General Assembly.

Mr. Manders and Mr. Fekete both stressed the importance of retaining institutional memory at IDEM.

In response to questions from Mr. Rector, Mr. Hamilton said that Indiana's low unemployment rate has contributed to hiring problems at IDEM. Mr. Hamilton continued by stating that IDEM may not need to hire more people but may instead need to redesign how the work is done.

Mr. Hamilton also said that while he supported some of the specific Subcommittee recommendations such as those concerning dual career tracks and the use of temporary positions, he said his job was to make certain that work done by IDEM was done efficiently. He said he would have to spend more time studying the other recommendations.

Senator Gard, Chairperson of the Triennial Review and Audit Privilege Subcommittee, then asked Dave Hensel, Assistant Commissioner for Legal Affairs at IDEM, to update the EQSC on developments concerning the problems the federal Environmental Protection Agency (EPA) had with the Indiana audit privilege statute (IC 13-28-4).

Mr. Hensel distributed a document to the EQSC that outlined the specific areas of concern the EPA had with the statute.⁴ He said that, as far as the EPA Region V office in Chicago was concerned, a draft Opinion Letter from the Indiana Attorney General had resolved issues involving information gathering authorities, information needed for injunctive relief, public access to information, and citizen challenge to assertion of privilege. He said the letter had been forwarded to the EPA Headquarters in Washington.

Mr. Hensel said that certain criminal provisions in the statute would probably have to be amended by the General Assembly to satisfy the EPA. He said he hoped to hear from the EPA in Washington within a month and have a final report on the audit privilege statute by the EQSC's November meeting.

In response to questions from several EQSC members, Mr. Hamilton said the EPA cannot point to any problem that has ever been caused by Indiana's audit privilege law. He said too much energy had already been spent on this "distracting" and "frustrating" issue. He stated the EPA had taken an extremely legalistic approach to this matter and it has "spun out of control."

Senator Gard then asked Bill Beranek, President of the Indiana Environmental Institute, to present a second set of recommendations from the Triennial Review and Audit Privilege Subcommittee.⁵ Mr. Beranek stated that the first recommendation with regards to the Triennial Review was that Indiana should have an antidegradation regulation

⁴ This document is on file with the Legislative Information Center (see footnote 1).

⁵ This document is on file with the Legislative Information Center (see footnote 1).

consistent with federal regulations but it should not include more precise conditions until the current federal antidegradation rulemaking establishes what the national policy on such directions should be.

Mr. Beranek also stated that the current general factors for assigning special categories of water bodies, such as Outstanding Natural Resource Water and Outstanding State Resource Waters, should be changed and expanded to increase commitment of the State for special and more appropriate controls on potential dischargers and land use in certain watersheds. He said the General Assembly should direct the Water Pollution Control Board to adjust the factors for special categories of waters consistent with certain general guidelines. Mr. Beranek added that the General Assembly should also establish a process to declare certain water bodies as Special Native Habitat Waters and to appropriately manage the drainage basins feeding these waters.

Mr. Beranek continued by stating that Indiana must have scientifically-based, appropriately designated uses for Indiana water bodies. He said IDEM should be directed to study those water bodies where there could be doubt about the potential of achieving a particular designated use before requiring point sources or non-point sources to invest in control measures to meet that standard of use.

Mr. Beranek also stated that Indiana should establish a coherent policy on sediment quality and on biological integrity as an indicator of the aquatic health of water bodies. He said the Water Pollution Control Board should be prohibited from promulgating rules changing the nature or extent of its authority over sediments as criteria or adding biological integrity as criteria until the completion of an appropriate study concerning these issues.

Mr. Hamilton then said he wanted to note that IDEM's participation in EQSC Subcommittee meetings, such as those of the Triennial Review and Audit Privilege Subcommittee, did not mean that IDEM endorsed all of the recommendations made by the Subcommittees. He said that Triennial Review was an extremely important, complicated, and ongoing process. Senator Gard agreed and said that the Subcommittee members were also still grappling with these issues.

Bill Hayden from the Hoosier Chapter of the Sierra Club stated that until rulemaking concerning the Triennial Review process was completed, he felt it was not a good idea for someone to pursue legislation that would second guess the process or change the rules in the middle of the process.

Mr. Hayden also stated that there was a wetlands conservation plan in existence for Indiana written by the Indiana Department of Natural Resources entitled "Indiana Wetlands Conservation Plan."

Representative Kruzan adjourned the meeting at 4:02 PM.